



Use of Force
Less-Lethal Weapons

Legal Considerations and
Case Law

Society's Expectations:



- Non-violent people should not be injured
- People on alcohol, drugs, serious psychological distress and the mentally ill should be controlled without injury
- Use Least Amount of Force
- Cause Minimal Injury or None
- Patient, Understanding and Tolerant
- Know difference between
 - intentional immediate threat of harm/fleeing felon
 - individual who needs medical/mental crisis assistance

Civil Liability Trends and Issues



- 1:30 OFFICERS IN THE UNITED STATES ARE BEING SUED
- 40-45% OF THOSE CASES INVOLVE ALLEGATIONS OF EXCESSIVE USE OF FORCE

Supreme Court Decisions: The Minimum Standard

“Objectively Reasonable”

Whether the officer’s actions are “objectively reasonable” in light of the facts and circumstances confronting the officer without regard to the underlying intent or motivation.

Graham v. Connor (U.S. Sup. Ct. 1989)

LMPD Department Instruction

413—Use of Force

- Penal Code Section 835(a)—
 - Only that amount of force that's reasonably necessary
 - To effect an arrest, prevent escape, or overcome resistance or threat of resistance
 - Need not retreat or desist from that effort
 - Officer shall not be deemed an aggressor or lose the right to self-defense

42 U.S.C. Section 1983

- “Every person who under color of any statute, ordinance, regulation, custom or usage... subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings or redress...”

Individual Liability: Officers, Supervisors and Trainers

- Officers with Immediate Contact
- Misconduct under Color of Law = Civil Rights
- Officers Present Who Fail to Provide Protection
 - “Bystander” liability requires contemporaneous knowledge of wrongful conduct and an opportunity to intervene
 - Breach of Standard of Care = Negligent Hiring, Training, Supervision, Retention

Bystander Liability

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Plakas v Drinski (7th Cir., 1994)



Is there a legal obligation to use any and all less-lethal alternatives before resorting to deadly force?

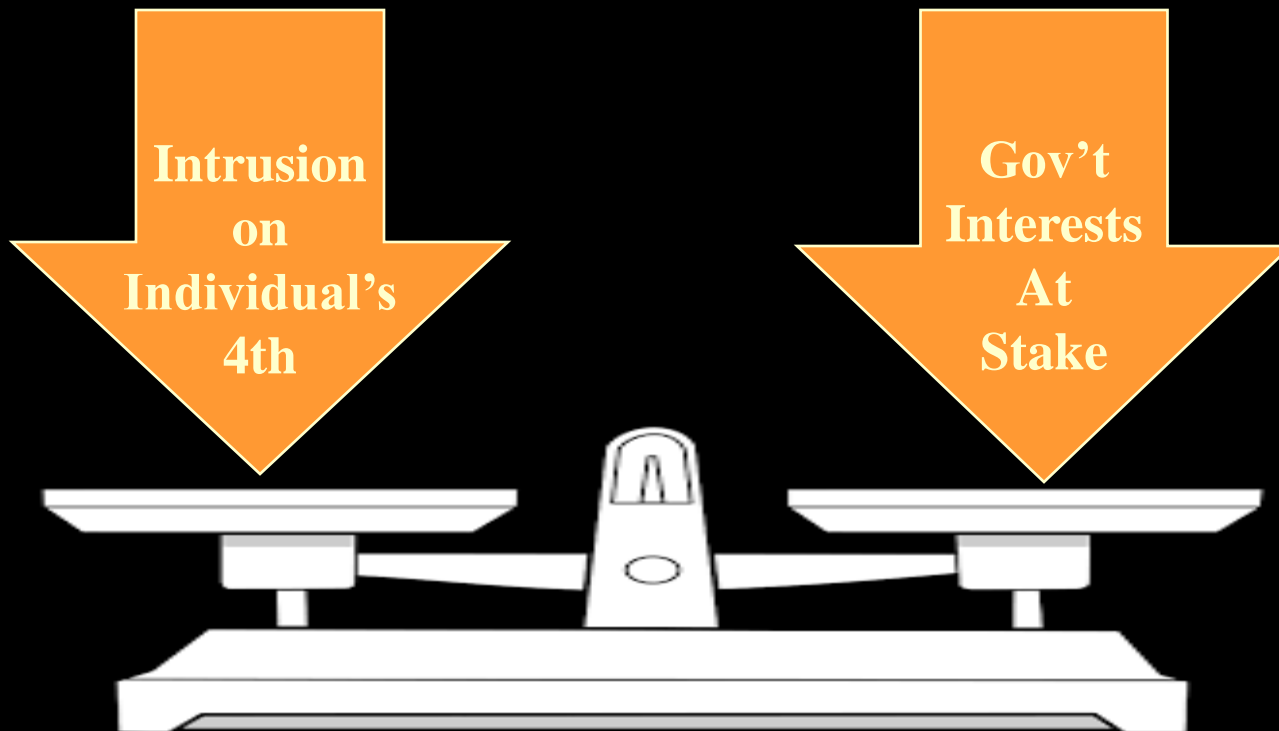
Deorle v Rutherford (9th Cir., 2001)



- When does the use of a less-lethal option (i.e. beanbag shotgun) become excessive force?
 - And what about qualified immunity?

Objective Reasonableness of Force

- Fourth Amendment



The Interests of The Government

- Severity of the crime
- Suspect poses an immediate threat to officers/others
- Active resistance or attempting to evade
- Any other exigent circumstances

This is how I shall determine objectively "the amount of force that is necessary in a particular situation."



But I totally get it that you sometimes make “split-second judgements in circumstances that are tense, uncertain, and rapidly evolving!”



Deorle v Rutherford (9th Cir., 2001)



- Deorle was emotionally distraught
- He was unarmed and did not pose an immediate threat
- Rutherford did not give a verbal warning
- This was not a split-second decision



Deorle v Rutherford



And what about qualified
immunity?????

Why Qualified Immunity?



To allow cops to carry out their duties without the fear of personal liability except when those cops are “plainly incompetent” or those who “knowingly violating the federal law.”

Qualified Immunity

- Granted if and only if:
 - Your conduct violates no *clearly established* statute or constitutional right which
 - A *reasonable* person would have known

Rutherford Under This 2-Prong Test



- Did Rutherford's conduct violate Deorle's clearly established rights?
 - YES
- Would a reasonable person have known he was violating Deorle's rights by deploying the beanbag round?
 - YES
- **EQUALS: NO QUALIFIED IMMUNITY**

Roberts v Manigold (6th Cir., 2007)



- What evidence does the court review when conducting this 2-prong test?

I shall review the testimony provided by the Defendant (aka the Officer) and the testimony provided by the Plaintiff. The testimony of the Plaintiff *shall* be taken in the light *most favorable* to the Plaintiff.



Roberts v Manigold

- A reasonable jury could find that Officer Stricklen used unnecessary and gratuitous force in violation of Roberts' clearly established Fourth Amendment right.

gra·tu·i·tous

/grə't(y)ooitəs/ ◀

adjective

1. uncalled for; lacking good reason; unwarranted.

"gratuitous violence"

synonyms: [unjustified](#), [uncalled for](#), [unwarranted](#), [unprovoked](#), u

Casey v City of Federal Heights (10th Cir., 2007)

- What if someone else Taser's my suspect? Can I get sued if their use of the Taser is ruled excessive force?

Casey v City of Federal Heights

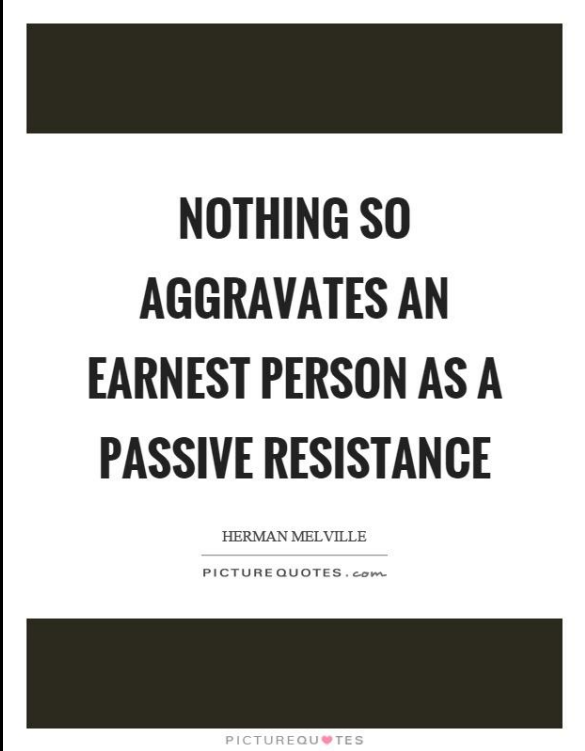


Buckley v Haddock (11th Cir., 2008)

The evolution of Taser case law begins!

Governmental interests and a lack of clearly established law

Passive resistance



**NOTHING SO
AGGRAVATES AN
EARNEST PERSON AS A
PASSIVE RESISTANCE**

HERMAN MELVILLE

PICTUREQUOTES.com

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Brown v Golden Valley (8th Cir., 2009)



Contempt of Cop

Vs

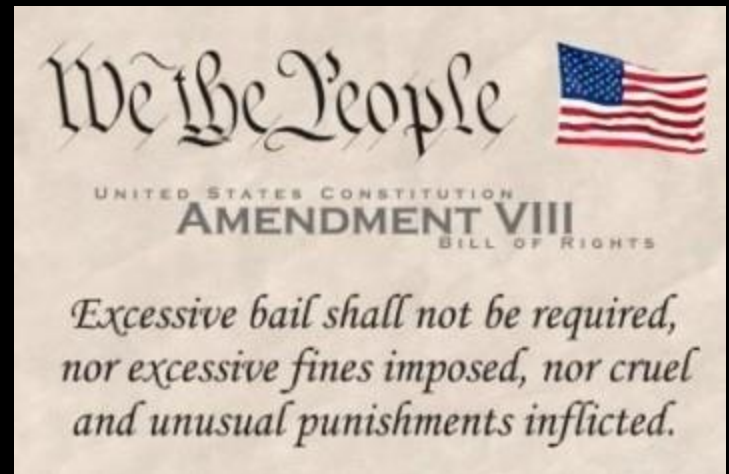
“Their” Version of Events

Brown v Golden Valley



¡No Bueno!

- “Whether Zarrett reasonably interpreted her refusal as a realistic threat to his personal safety or whether it constituted nothing more than affront to his command authority is a matter for a jury to decide.” AND...
- “We find further support for our holding in the Eighth Amendment context.....”



Oliver v Fiorino (11th Cir., 2009)



So Officer, your testimony is that you Tasered my client “eleven or twelve” times?

Oliver v Fiorino (11th Cir., 2009)

- “the force employed was so utterly disproportionate to the level of force reasonably necessary that any reasonable officer would have recognized that his actions were unlawful.”

Why Was He Tased More Than 8 Times?



Mann v Taser International et al *(11th Cir., 2009)*



When you Taser someone....and they die....

Mann v Taser International



- Using a Taser on a subject who is handcuffed
- Medical Treatment
- Influence of drugs

Bryan v. McPherson

(9th Cir. 2010)

- **The Taser becomes an “intermediate or medium, though not insignificant, quantum of force.”**



Bryan v McPherson (9th Cir., 2010)

- Use of the Taser WAS excessive
BUT.....
- Because the law on the use of Tasers is still “in its development stage, an officer could have reasonably believed that the use of a Taser was lawful under these circumstances.”

Bryan v. McPherson

608 F.3d 614 (9th Cir. 2010)

- *...whether Officer MacPherson believed that Bryan had committed a variety of nonviolent misdemeanors or that Bryan was mentally ill, this Graham factor does not support the deployment of an intermediate level of force.*
- *No verbal warning*
- *Could other tactics have been used?*



Mattos v Agarano
Brooks v City of Seattle
(9th Cir., 2011)

- Non-threatening, non-violent, and non-resistive behavior + Taser = Excessive
- Passive resistance from a pregnant woman on a traffic stop + drive stun = Excessive
- BUT...the law still is not clearly established, therefore qualified immunity

Young v. County of Los Angeles

9th Circuit 08/26/11



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+



Young v. County of Los Angeles

- On appeal did not argue that Young posed any physical threat to him prior to the use of OC nor that he feared such a threat.
- ...struck Young with the baton because he “believed that Young was trying to gain a position of advantage over him, from which he could then launch an assault,” and that he “believed that Young was about to throw the broccoli at him in order to cause a distraction before assaulting him.”

Young v. County of Los Angeles

Recorded Media Review Issue

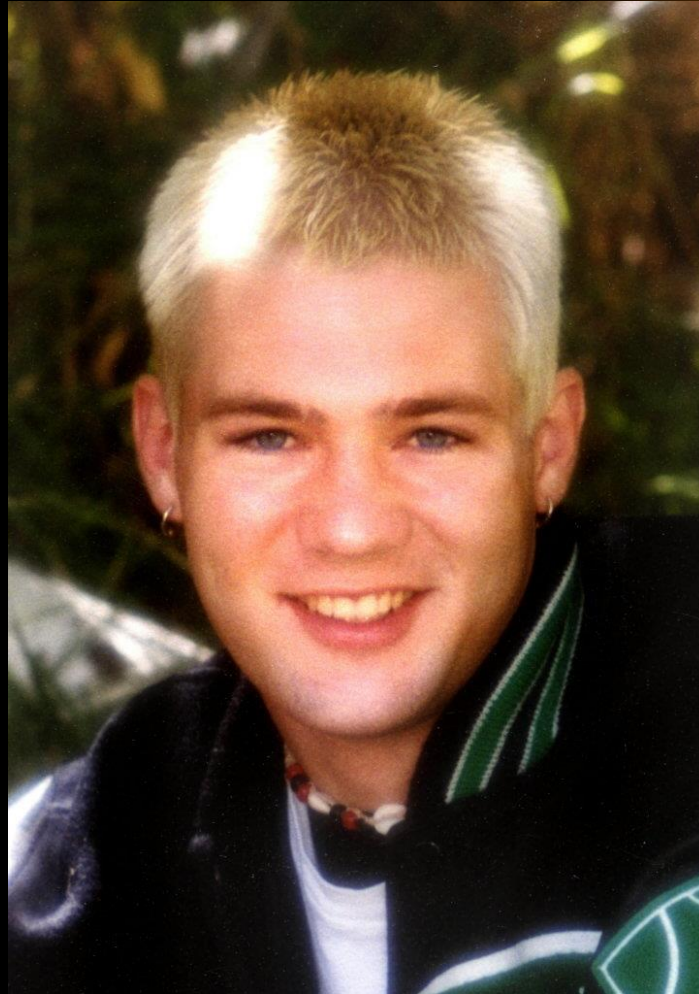
- The officer wrote in his report that driver had responded to his orders with the objection, “F*** you, I don’t want to, I’m eating my vegetables.”
- The audio transcript records no such statement by the driver.
 - It DID however record the officer saying, “Well, you know what, that’s part of not going along with the program.”

Young v. County of Los Angeles

Taser, OC, Batons = Intermediate Force

- “Both pepper spray and baton blows are forms of force capable of inflicting significant pain and causing serious injury.
- As such, both are regarded as "intermediate force" that, while less severe than deadly force, nonetheless present a significant intrusion upon an individual's liberty interests.

Glenn v Washington County
(9th Cir., 2011)



Lukus Glenn

Glenn v Washington County

- Time
- Less-lethal precipitates deadly force:

“Where an officer intentionally or recklessly provokes a violent confrontation, if the provocation is an independent Fourth Amendment violation, he may be held liable for his otherwise defensive use of deadly force.”

Armstrong v Village of Pinehurst et al (4th Cir., 2016)

- “Deploying a Taser is a serious use of force.”
- “Taser use is unreasonable force in response to resistance that does not raise a risk of immediate danger.”

Tasers

Intermediate
Force



Serious
Force

2007

2016